

IMPLEMENTATION AGREEMENT

FOR COMPACT DEVELOPMENT

BY AND AMONG

**THE MILLENNIUM CHALLENGE CORPORATION
AND**

THE GOVERNMENT OF GEORGIA

**ACTING THROUGH THE MINISTRY OF FINANCE
AND**

MILLENNIUM CHALLENGE GEORGIA FUND

EXECUTION COPY

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TABLE OF CONTENTS

	Page No.
RECITALS	1
ARTICLE I - PURPOSE AND TERM	2
Section 1.1. Objective and Activities	2
Section 1.2. Effective Date, Term	2
ARTICLE II - DISBURSEMENT	2
Section 2.1. Disbursement Framework	2
Section 2.2. Disbursement Requests	2
Section 2.3. Disbursement by MCC; Reservation	3
Section 2.4. Commitment Letters	3
ARTICLE III - IMPLEMENTATION; USE OF FUNDS	3
Section 3.1. Implementation Framework	3
Section 3.2. Procurement of Services; Mandatory Contract Provisions	4
Section 3.3. Use of Funds	4
Section 3.4. Taxation	6
Section 3.5. Records and Information	6
Section 3.6. Audits	7
Section 3.7. Approvals and Consents	7
ARTICLE IV - TERMINATION OF GRANT	8
Section 4.1. Termination	8
Section 4.2. Reinstatement	9
ARTICLE V - GOVERNMENT REPRESENTATIONS AND OBLIGATIONS	9
Section 5.1. Nature of Obligation	9
Section 5.2. No Violation of Law	9
ARTICLE VI - GENERAL	10
Section 6.1. Governing Law; Consultation	10
Section 6.4. Publicity, Information and Marking	10
Section 6.5. No Assurance of Future Assistance	10
Section 6.6. Foreign Government Information	11
Section 6.7. Headings	11
Section 6.8. Severability	11
Section 6.9. Communications	11
Section 6.10. Counterparts; Signatures	12
Section 6.11. Relationship Between the Parties	12
Section 6.12. MCC Status	12
Section 6.13. Non-waiver of Remedies	12
Section 6.14. Language	13
Section 6.15. Amendment	13
ANNEX I - DESCRIPTION OF THE ASSISTANCE	1
Section 1. Description of Assistance	1
Section 2. Contracting of Service Providers	1
Section 3. Budget and Disbursement	1
Section 4. Terms of Reference	2
Schedule 1 to Annex I - Feasibility Study, Environmental Impact Assessment and Final Design	1

Schedule 2 to Annex I - Right-Of-Way Property Survey	1
Schedule 3 to Annex I - Road Project Director	1
ANNEX II - FORM OF REQUEST FOR DISBURSEMENT OF GRANT.....	1
ANNEX III - FORM OF SERVICE PROVIDER INVOICE	1
ANNEX IV - FORM OF COMMITMENT LETTER.....	1

IMPLEMENTATION AGREEMENT

This IMPLEMENTATION AGREEMENT (the "**Implementation Agreement**") is made by and between the Millennium Challenge Corporation, a United States Government corporation ("**MCC**"), the Government of Georgia (the "**Government**"), acting through the Ministry of Finance (the "**Ministry**"), and Millennium Challenge Georgia Fund, established pursuant to Presidential Decree No 561, dated December 3, 2004, and Ministry of Finance Order No. 796 dated December 8, 2004 ("**MCG**"), and shall become effective as provided herein. MCC, the Ministry and MCG are sometimes referred to herein individually as a "**Party**" and together as the "**Parties**."

RECITALS

WHEREAS, the Board of Directors of MCC has selected Georgia as eligible to present to MCC a proposal for the use of 2004 and 2005 Millennium Challenge Account ("**MCA**") assistance to help facilitate poverty reduction through economic growth in Georgia (the "**Proposed Compact**");

WHEREAS, the Government submitted a proposal (the "**Proposal**") on September 24, 2004, which Proposal includes rehabilitation of the Samtskhe-Javakheti road (the "**Proposed Road Project**");

WHEREAS, the Government, acting through the Ministry, and MCC have entered into a Grant Agreement dated the date hereof (the "**Grant Agreement**") pursuant to which MCC has agreed, subject to the conditions contained therein, to grant to the Government an amount not exceeding four million one hundred fifty five thousand United States Dollars (USD \$4,155,000) (the "**Grant**") for the purpose of carrying out the activities described therein and herein related to the development and implementation of the Proposed Road Project;

WHEREAS, the Ministry has authorized MCG to implement the activities related to the development and implementation of the Proposed Road Project as described herein;

WHEREAS, the Parties anticipate that if a Millennium Challenge Compact is concluded with Georgia, all or some of the implementation plans developed pursuant to this Grant Agreement may be an integral part of such Compact; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE I PURPOSE AND TERM

Section 1.1. Objective and Activities. The objective of this Implementation Agreement is to facilitate the provision of the assistance to MCG for the preparation of the Proposed Road Project as set out in Article I of the Grant Agreement (the "*Assistance*"), as described in more detail in Annex 1 (the "*Activities*").

Section 1.2. Effective Date, Term. This Implementation Agreement shall become effective on the last date on which it is signed by the Principal Representative (defined below) of each Party ("*Effective Date*"). Unless otherwise agreed in writing between the Parties, whether or not the Grant is fully utilized, this Implementation Agreement shall terminate on the earlier of (i) twenty-four (24) months from the Effective Date unless otherwise agreed in writing by the Parties (the "*Completion Date*"), (ii) the date on which any Party terminates this Implementation Agreement in accordance with Section 4.1 hereof, or (iii) the date on which any Party terminates the Grant Agreement in accordance with Section 1.2 thereof.

ARTICLE II DISBURSEMENT

Section 2.1. Disbursement Framework

(a) Except as may be otherwise agreed in writing by the Parties, MCC shall from time to time, upon presentation of satisfactory documentation in accordance with this Implementation Agreement, make disbursements of the Grant directly to each Service Provider (defined below) which has entered into a contract, satisfactory to MCC, with MCG to provide any one of the Activities.

(b) MCC may, in its sole discretion, reduce the total amount of the Grant by an amount equal to the amount attributable to any failure to satisfy a condition precedent to disbursement specified in or any violation of this Implementation Agreement (including a procurement in violation of Section 3.2), and such amount shall be automatically released from any obligation in connection with this Implementation Agreement. Upon expiration or termination of this Implementation Agreement or the Grant Agreement, any amount of the Grant not disbursed by MCC in accordance with Section 2.3 of this Implementation Agreement shall be automatically released from any obligation in connection with this Implementation Agreement and the Grant Agreement. Any amounts of the Grant disbursed by MCC but not incurred as permitted pursuant to Section 4.1(d) of this Implementation Agreement shall be returned promptly to MCC to such accounts designated by MCC from national funds in accordance with Section 3.8 of this Implementation Agreement.

Section 2.2. Disbursement Requests.

(a) MCG shall submit to MCC Disbursement Requests in the form attached hereto as Annex 2. Except as may be otherwise agreed by MCC in writing, MCG shall not submit more than one Disbursement Request per Service Provider Contract (defined below) in any calendar

month. Each Disbursement Request shall be submitted at least 15 days prior to the date on which the disbursement is requested to be made.

(b) Each Disbursement Request shall:

(i) attach the invoice presented by the Service Provider to MCG, with a simultaneous copy to MCC, substantially in the form attached hereto as Annex 3, which shall include the Service Provider Contract date and number, Service Provider Contract budget line item to be paid and balance remaining after payment of the invoice, and certification that the Service Provider is not on the excluded party list of the United States Government (<http://epls.arnet.gov>) or on the list of firms debarred by the World Bank (<http://www.worldbank.org>);

(ii) state the amount and purpose of the disbursement and the Service Provider Contract date and number; certify that the invoice presented by the Service Provider has been reviewed by MCG and found to be in accordance with the terms of the Grant Agreement and this Implementation Agreement, including, without limitation, the limitations on the use of funds set forth in Section 3.3 of this Implementation Agreement; and

(iii) include such other information as MCC may from time to time request.

Section 2.3. Disbursement by MCC; Reservation. MCC shall make disbursements against satisfactory documents presented in accordance with Section 3.2 of this Implementation Agreement. MCG and the Ministry acknowledge that MCC shall make disbursements in reliance upon the certifications given by MCG to MCC in each Disbursement Request and that MCC shall have no obligations to the Service Provider under the terms of the Service Provider Contract and no obligations to MCG to verify the accuracy or completeness of any representations made by the Service Provider to MCG. Notwithstanding the foregoing, MCC reserves the right to withhold, in its sole discretion, disbursement with respect to any Disbursement Request which is not satisfactory to MCC.

Section 2.4. Commitment Letters. To facilitate the disbursement process, MCC may issue a commitment letter to a Service Provider substantially in the form of Annex 4.

ARTICLE III IMPLEMENTATION; USE OF FUNDS

Section 3.1. Implementation Framework.

(a) MCG shall engage the services of a procurement agent satisfactory to MCC (the "**Procurement Agent**") and shall obtain MCC's approval prior to entering into a contract with the Procurement Agent. MCG shall ensure that the Procurement Agent shall procure contracts with service providers ("**Service Providers**") for the Activities set out in Schedule 1 and Schedule 2 to Annex 1 (the "**Service Provider Contracts**").

(b) MCG shall enter into and perform the Service Provider Contracts, make Disbursement Requests to MCC, and provide reports, audits and other information to MCC, in each case as set out in this Implementation Agreement.

(c) The Ministry shall take all steps necessary to ensure that MCG complies with all of its obligations under this Implementation Agreement.

Section 3.2. Procurement of Services; Mandatory Contract Provisions.

(a) The summary terms of reference for Service Providers are set out in Annex 1 attached hereto.

(b) MCG shall follow, and shall ensure that the contract with the Procurement Agent provides that the Procurement Agent shall follow, procurement guidelines and procedures acceptable to MCC in procuring Service Provider Contracts, including the following requirements:

(i) open, fair and competitive procedures shall be used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods and services.

(c) MCG shall procure, and with respect to the Activities in Schedule 1 and Schedule 2 to Annex I, shall ensure that the Procurement Agent procures, that all Service Provider Contracts shall include: (i) the restrictions set out in Section 3.3 (Use of Funds); (ii) exemption from taxation as set out in Section 3.4 (Taxation); (iii) provisions adequate to facilitate MCG's compliance with the requirements of Section 3.5 (Records and Information) and Section 3.6 (Audits); and (iv) budget, basis for Service Provider Contract payment and invoice procedures acceptable to MCC and substantially in the form set out in Annex 4, including provision for simultaneous presentation of invoices to MCG and MCC.

(d) MCG shall ensure that MCC shall have the opportunity to review and approve technical evaluations before financial evaluations are opened for proposed Service Providers for the Activities in Schedule 1 and Schedule 2 to Annex 1. MCG shall obtain the prior written approval of MCC before entering into each Service Provider Contract.

Section 3.3. Use of Funds.

(a) The Ministry and MCG shall ensure that the Grant shall be used solely for the purposes of the Assistance described in Annex 1.

(b) The Ministry and MCG further agree and undertakes that the Grant shall not be used to undertake, finance or otherwise support:

(i) any activity that is subject to prohibitions on use of funds contained in (A) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)-(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (B) any provision of law comparable to the eleventh and fourteenth provisos under the heading "Child Survival and Health Programs Fund" of division E of Public Law 108-7 (117 Stat. 162), a United States statute;

(ii) any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(A) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(B) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(C) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(D) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(E) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(F) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(G) Providing general budget support for an organization that engages in any activity prohibited above;

(iii) the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit; or

(iv) any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and MCG agree otherwise in writing, MCG shall ensure that activities undertaken or financed in whole or in part (directly or indirectly) by the Grant comply with environmental guidelines delivered by MCC to MCG or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time (the "*Environmental Guidelines*"), including any definition of "likely to cause a significant environmental, health, or safety hazard" as may be set forth in such Environmental Guidelines.

Section 3.4. Taxation. The Ministry and MCG shall ensure that the Grant proceeds shall be free from any taxes imposed under laws currently or hereafter in effect in Georgia during the term of the Grant Agreement and this Implementation Agreement. This shall apply to the use of any Grant proceeds and to any work performed under or activities undertaken by any Service Provider funded by the Grant, and shall apply to all taxes, tariffs and duties and other levies, including:

(i) to the extent attributable to Grant proceeds, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Georgia, receiving Grant proceeds, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Georgia, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 3.4, the term "national" refers to organizations established under the laws of Georgia, other than MCG or any other entity established solely for purposes of managing or overseeing the implementation of the Grant and the Proposed Compact or any wholly-owned subsidiaries, divisions, or affiliates of entities not registered or established under the laws of Georgia;

(ii) customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Grant use or the personal use of individuals who are neither citizens nor permanent residents of Georgia and who are present in Georgia for purposes of carrying out the Grant or their family members, including all charges based on the value of such imported goods;

(iii) taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of Georgia, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to Grant proceeds; and

(iv) taxes or duties levied on the purchase of goods or services financed by Grant funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

Section 3.5. Records and Information.

(a) MCG shall furnish to MCC, and shall use its best efforts to ensure that any other third party receiving a portion of the Grant proceeds, as appropriate, furnishes to MCG, any

records and other information as may be necessary or appropriate for MCG effectively to carry out its obligations under the Grant Agreement and this Implementation Agreement.

(b) MCG shall maintain, and shall use its best efforts to ensure that all third parties maintain, accounting books, records, documents and other evidence relating to the Grant Agreement and this Implementation Agreement adequate to show, without limitation, the use of the Grant proceeds, including all costs incurred by MCG and other third parties, the receipt and use of goods and services acquired in furtherance hereof, the nature and extent of solicitations of prospective suppliers of goods and services acquired by MCG and other third parties, the basis of award of Service Provider Contracts and orders in furtherance hereof, the overall progress of the implementation of the Grant, and any documents reasonably requested by MCC upon reasonable notice ("**Records**"). MCG shall maintain, and shall use its best efforts to ensure that all Records are maintained in accordance with generally accepted accounting principles prevailing in the United States, or at MCG's option and with the prior written approval by MCC, other accounting principles. Records shall be maintained for at least five (5) years after the Effective Date or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

Section 3.6. Audits. The Ministry and MCG, as applicable, shall afford, or cause to be afforded, authorized representatives of MCC, the Inspector General of the United States Agency for International Development ("**Inspector General**"), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of the Grant Agreement and this Implementation Agreement, and any agents or representatives engaged by MCC or a representative to conduct any assessment, review or evaluation of the Grant, at all reasonable times the opportunity to audit, review, evaluate or inspect activities financed in whole or in part (directly or indirectly) by MCC or undertaken in connection with the Grant including pursuant to any Service Provider Contract, the utilization of goods and services purchased or financed in whole or in part (directly or indirectly) by the Grant, and Records relating to activities financed or undertaken in furtherance of, or otherwise relating to, the Grant Agreement and this Implementation Agreement, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, affiliates, contractors, representatives and agents of the Ministry or MCG or any Service Provider hereunder. MCG shall make provision for such assessment, review and evaluation in each Service Provider Contract.

Section 3.7. Approvals and Consents. The Ministry and MCG, as applicable, shall take or cause to be taken such actions, including using its best efforts to obtain all necessary approvals and consents, as are necessary and appropriate for the implementation of the Grant.

Section 3.8. Refunds. In the event Grant proceeds are used by any party in a manner not supported by valid documentation in accordance with the Grant Agreement and this Implementation Agreement, or otherwise in any manner not in accordance with the Grant Agreement and this Implementation Agreement, or for goods or services not used in accordance with the Grant Agreement and this Implementation Agreement, MCC, notwithstanding the availability or exercise of any other remedies under the Grant Agreement or this Implementation

Agreement, and notwithstanding any action taken or not taken between MCG and the Ministry, may require the Ministry to refund, and the Ministry shall refund, the amount of such Grant proceeds in United States Dollars to MCC to such accounts designated by MCC within thirty days after receipt of a request therefore. The Ministry shall cause the Government to apply national funds to satisfy its obligations under this Section 3.8 and shall not apply any portion of the Grant or any other funds received from MCC to satisfy such obligations. Notwithstanding any other provision of this Implementation Agreement or any other agreement to the contrary, MCC's right under this Section 3.8 for a refund shall continue until the Completion Date and for a period of (i) three (3) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

ARTICLE IV TERMINATION OF GRANT

Section 4.1. Termination.

(a) Any Party may terminate this Implementation Agreement with 30 days prior written notice; *provided, however*, that neither the Ministry nor MCG may terminate this Implementation Agreement with respect to any activity for which a commitment letter or disbursement has already been issued or approved by MCC.

(b) Notwithstanding the preceding paragraph, MCC may terminate this Implementation Agreement upon giving the Ministry and MCG written notice, if MCC determines that:

(i) any use or proposed use of Grant proceeds or continued implementation of the Grant would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) the Ministry, MCG or any other third party receiving Grant proceeds is engaged in activities that are contrary to the national security interests of the United States;

(iii) the Ministry or MCG has committed an act, or an event has occurred that would render Georgia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) the Ministry, MCG or any Service Provider, in MCC's sole opinion, has materially breached one or more of its assurances or any other covenants, obligations or responsibilities under the Grant Agreement or this Implementation Agreement, as applicable, or has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of the Grant Agreement or this Implementation Agreement or a Service Provider Contract, as applicable;

(v) if the Ministry, MCG, any Service Provider, or any of their respective directors, officers, employees, affiliates, contractors, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(vi) any Grant proceeds are applied, directly or indirectly, to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution; or

(vii) an event or condition of any character has occurred that, in MCC's sole opinion: materially and adversely affects, or is likely to materially and adversely affect, the ability of the Ministry, MCG or any other party to effectively implement, or ensure the effective implementation of, the Grant or to otherwise carry out its responsibilities or obligations under or in furtherance of the Grant Agreement or this Implementation Agreement or to exercise its rights hereunder.

(d) Notwithstanding the foregoing provisions, reasonable expenditures for goods and services that are properly incurred under or in furtherance of the Grant Agreement or this Implementation Agreement before the Completion Date or before termination hereof may be paid from Grant proceeds if the request for such payment is properly submitted within sixty (60) days after such expiration or termination.

Section 4.2. Reinstatement. MCC may reinstate any suspended or terminated Grant funding under the Grant Agreement or this Implementation Agreement if MCC determines, in its sole discretion, that the Ministry, MCG or other relevant party has demonstrated a commitment to correcting each condition for which Grant funding was suspended or terminated.

ARTICLE V

GOVERNMENT REPRESENTATIONS AND OBLIGATIONS

Section 5.1. Nature of Obligation. This Implementation Agreement is a legal, valid and binding obligation of the Government. Each of the Ministry and MCG has the power and authority to execute, deliver and perform its obligations under this Implementation Agreement and each certificate or instrument contemplated hereby. The execution, delivery and performance by each of the Ministry and MCG of this Implementation Agreement and each certificate or instrument contemplated hereby to which it is or will be a party have been duly authorized by all necessary action by the Ministry and MCG, as applicable and no other approvals or consents are required.

Section 5.2. No Violation of Law. Neither this Implementation Agreement nor any of the activities contemplated herein violates or will violate any applicable law or regulation in effect in Georgia or any decree, order, agreement or obligation to which either of the Ministry or MCG is a party or by which it is bound.

ARTICLE VI GENERAL

Section 6.1. Governing Law; Consultation.

(a) This Implementation Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) Any Party may at any time request consultations relating to the interpretation or implementation of this Implementation Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter into consultations and the other Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative (defined below) or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, any Party may terminate this Implementation Agreement pursuant to Section 4.1. The Parties shall enter any such consultations guided by the principle of achieving the Grant objective in a timely and cost-effective manner.

(c) In matters arising under or relating to this Implementation Agreement, no Party shall be deemed to have submitted to the jurisdiction of the courts of the State of New York or any other court or judicial body.

Section 6.2 Alteration. Each of the Ministry and MCG shall ensure that the Grant shall not be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in Georgia that would have the effect of requiring or allowing any impoundment, rescission or sequestration thereof.

Section 6.3. Liens or Encumbrances. Each of the Ministry and MCG shall ensure that the Grant shall not be subject to any lien, attachment, enforcement of judgment, pledge or encumbrance of any kind, except with the prior approval of MCC.

Section 6.4. Publicity, Information and Marking. Each of the Ministry and MCG shall give appropriate publicity to the Grant Agreement and this Implementation Agreement as a program to which the United States has contributed, including by posting the Grant Agreement and this Implementation Agreement, and any amendments thereto, on an agreed website, identifying Grant activity sites, and marking goods financed in whole or in part (directly or indirectly) by the Grant; *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is financing the Grant or any other publicity materials referencing MCC shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time.

Section 6.5. No Assurance of Future Assistance. Nothing contained in the Grant Agreement or this Implementation Agreement shall be construed as creating an obligation on the part of

MCC to provide any further funding or assistance, other than the Grant, in relation to the Proposed Compact proposal or any other project or program in Georgia.

Section 6.6. Foreign Government Information. The Parties agree to the removal of the Foreign Government Information (“*FGI*”) classification for the text of this Implementation Agreement and the terms of the Grant and the implementation thereof described herein. Notwithstanding the foregoing, except as shall otherwise be agreed by the Parties in writing, all prior drafts of this Implementation Agreement, any other agreement between MCC and the Government yet to be negotiated and documented, and all other documents, information and other communications between MCC and the Government or their respective representatives either prior to, on or after the date of this Implementation Agreement, whether related to the subject matter of this Implementation Agreement or otherwise, will remain subject to FGI classification and, as such, protected from disclosure to the public in accordance with the letter dated December 8, 2004 from MCC to the Government.

Section 6.7. Headings. The Section and Subsection headings used in this Implementation Agreement are included for convenience only and are not to be considered in construing or interpreting this Implementation Agreement.

Section 6.8. Severability. If one or more provisions of this Implementation Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Implementation Agreement and the balance of this Implementation Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 6.9. Communications. Unless otherwise agreed by the Parties in writing, any notice, request, report, document or other communication required, permitted, or submitted by any Party to the other under this Implementation Agreement shall be (i) in writing, (ii) in English, and (iii) deemed duly given: (a) upon personal delivery to the Party or Parties to be notified; (b) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party or Parties, if not, then on the next business day; or (c) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:
Millennium Challenge Corporation
Attention: Vice President for Country Programs (Principal Representative),
with a copy to the General Counsel
875 Fifteenth Street, N.W.
Washington, DC 20005
United States of America
Tel: 1-202-521-3600
Fax: 1-202-521-3700
Email: VPCountryPrograms@mcc.gov (Vice President for Country Programs);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To the Ministry:
Ministry of Finance
Attention: Minister of Finance (Principal Representative)
70a I. Abashidze St.
Tbilisi, 0062
Georgia
Tel: (995-32) 22-68-05
Fax: (995-32) 33-19-22

To MCG:
Millennium Challenge Georgia Fund
Attention: Chief Executive Officer (Principal Representative)
4 Sanapiro St.
Tbilisi, 0105
Georgia
Tel: + (995-32) 93-91-12; 93-91-13; 93-91-33
Fax: + (995-32) 93-91-44
Email: lashanidze@mcb.ge

Section 6.10. Counterparts; Signatures. Except as the Parties may otherwise agree in writing from time to time, this Implementation Agreement between the Parties may be executed in one or more counterpart signatures and, each when so executed and delivered, shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature delivered by facsimile or electronic mail in accordance with Section 6.9 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 6.11. Relationship Between the Parties. Nothing in this Implementation Agreement among the Parties shall be construed to constitute or create a partnership, agency relationship, joint venture, or equity or similar interest among the Parties. No Party has the power or authority to act on behalf of the other Party, except as expressly authorized by the other Party in writing.

Section 6.12. MCC Status. MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Implementation Agreement. As such, MCC has no liability under this Implementation Agreement, is immune from any action or proceeding arising under or relating to this Implementation Agreement and each of the Ministry and MCG hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Implementation Agreement, MCC is not subject to the jurisdiction of the courts or other body of Georgia.

Section 6.13. Non-waiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with this Implementation Agreement shall be construed as a waiver of such right or remedy.

Section 6.14. Language. This Implementation Agreement is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

Section 6.15. Amendment. This Implementation Agreement may be amended or modified by written agreement of the Parties.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, MCC, the Ministry and MCG, each acting through its duly authorized representative, have caused this Implementation Agreement to be executed in their names and delivered as of the 17th day of July, 2005.

MILLENNIUM CHALLENGE
CORPORATION

By: _____ / s / _____

Name: John Hewko

Title: Vice President for Country
Programs

MINISTRY OF FINANCE OF GEORGIA

By: _____ / s / _____

Name: Alexander Aleksishvili

Title: Minister of Finance

MILLENNIUM CHALLENGE GEORGIA
FUND

By: _____ / s / _____

Name: Lasha Shanidze

Title: Chief Executive Officer

ANNEX I DESCRIPTION OF THE ASSISTANCE

Section 1. Description of Assistance

1.1. The Assistance shall be comprised of the following Activities:

- (i) procuring a feasibility study, environmental impact assessment, and design work;
- (ii) procuring a Service Provider to identify land ownership and inventorying affected properties; and
- (iii) procuring the services of a road project director to coordinate and oversee the above described activities.

1.2 The Assistance shall be subject to all of the provisions of the Implementation Agreement of which this Annex forms a part, including the restrictions on use of funds set forth in Section 3.3 of the Implementation Agreement.

Section 2. Contracting of Service Providers

2.1 The Assistance shall be provided by Service Providers in accordance with the terms of reference ("**TORs**") set out in this Annex.

2.2 (i) MCG shall conduct a tender process acceptable to MCC for the Service Providers to be procured under Sections 1.1(i) and (ii) of this Annex. MCG shall sole source the Service Provider under Section 1.1(iii) of this Annex.

(ii) The tender process shall be conducted in accordance with Section 3.2 of the Implementation Agreement using procurement guidelines acceptable to MCC and agreed between MCG and MCC in advance in writing (the "**Implementation Procurement Guidelines**").

Section 3. Budget and Disbursement

3.1 The budget for the Grant is expected to be utilized as set forth below, and in no circumstances shall the total budget exceed \$4,155,000. Amounts may be allocated and reallocated between Activities by agreement between MCC and MCG.

3.2. Disbursements shall be made in accordance with Article II of the Implementation Agreement.

Section 4. Terms of Reference

The terms of reference for each Activity of the Assistance is set out in the Schedule to this Annex designated below.

- Schedule 1: Feasibility Study, Environmental Impact Assessment and Final Design.
- Schedule 2: Right-Of-Way Property Survey
- Schedule 3: Road Project Director

Schedule 1 to Annex I Feasibility Study, Environmental Impact Assessment and Final Design

1. Introduction

The subject of these Terms of Reference (“**TOR**”) is a study of improving the transportation quality, capacity, and safety in the Proposed Road Project corridor through infrastructure investments.

The study will be undertaken by a firm (the “**Service Provider**”) to be engaged by Millennium Challenge Georgia Fund (“**MCG**”) in accordance with the Implementation Procurement Guidelines.

The study will include the following major components:

- Evaluation of alternative routes for the section connecting to the Turkish border;
- Preparation of a feasibility study (the “**Feasibility Study**”), including preliminary design, to evaluate the traffic, engineering, economic, social, environmental, maintenance and institutional aspects of various transport infrastructure investments;
- Preparation of an Environmental Impact Assessment (“**EIA**”). The product of EIA will be a full justification of the selected improvements, environmentally and socially sound and consistent with international practice, and in strict accordance with Georgian environmental requirements and with the environmental requirements of the World Bank; and
- Preparation of final designs and bid documents.

MCG’s Road Project Director (“**RPD**”) will be the primary point of contact for the Service Provider. RPD will review and coordinate all matters related to the Project on behalf of MCG.

The final TOR in the Service Provider Contract will be subject to MCC approval and may set out in more detail the scope of work to be undertaken and the deliverables and time schedule.

2. Description of Services

The services to be provided under the TOR will include the following.

- A. Feasibility Study, including but not limited to the following:
- Review of Existing Studies and Data
 - Initial Road Reconnaissance
 - Selection of Route Options
 - Selection and Approval of Design and Construction Standards
 - Traffic Analysis and Forecasts
 - Hydro-Geological, Geotechnical and Seismic Studies
 - Alignment Studies
 - Pavement Studies
 - Structural Studies
 - Drainage Studies
 - Road Safety and Disability Access Studies
 - Preliminary Assessment of Work Quantities and Costs
 - Economic Evaluation Project Implementation Considerations
 - Road Maintenance Considerations
- B. EIA, including but not limited to the following:
- Scoping Exercise
 - Description of Baseline Environment
 - Description of Environmental Legislation and Regulatory Considerations
 - Determination of Potential Impacts
 - Analysis of Alternatives
 - Development of Environmental Management Plan
 - Development of Resettlement Plan
 - Discussion of Public Consultation and Disclosure
- C. Preparation of Final Designs and Bid Documents, including but not limited to the following:
- Field Surveys, Investigations, and Tests
 - Detailed Design
 - Preparations of Drawings, Specifications, Cost Estimates, and Bid Documents, for Contractor(s) and Construction Supervisor(s).

3. Time Schedule and Deliverables

Within the period agreed for these services, the Service Provider shall have submitted to MCG the Feasibility Study, EIA and all packages of the final design.

Schedule 2 to Annex I Right-Of-Way Property Survey

1. Introduction

The subject of these Terms of Reference (“**TOR**”) is a property survey along the right-of-way of existing roads that may be rehabilitated under the Project (the “**ROW Survey**”). The ROW Survey will be undertaken by a surveying firm (the “**Service Provider**”) to be engaged by Millennium Challenge Georgia Fund (“**MCG**”) in accordance with the Implementation Procurement Guidelines.

MCG’s Road Project Director (“**RPD**”) will be the primary point of contact for the Service Provider. RPD will review and coordinate all matters related to the Project on behalf of MCG.

The final TOR in the contract with the Service Provider will be subject to MCC approval and may set out in more detail the scope of work to be undertaken and the deliverables and time schedule.

2. Description of Services

The Service Provider shall perform the following tasks:

- Take digital video recordings of the ROW and adjacent areas along the entire length of each of the aforementioned road sections. The video recordings will be taken from a vehicle driving at a speed of 30-40 km per hour or less when the pavement is in poor condition, and shall be dated;
- At the localities where road sections traverse populated areas or where there are fences or structures within or adjacent to the ROW:
 - Take digital photos (static) of the ROW and adjacent area, at intervals not longer than 50 m, indicating date taken;
 - Carry out a survey of properties located within or adjacent to the ROW;
 - Use GPS to locate: a) the limits of the survey area along the road (such as entrances to and exits from populated areas); b) the survey benchmarks; and c) the locations of major structures or landmarks within the surveyed areas (for reference purposes);
 - Prepare ROW plans (in strip-map form) for each locality a scale of 1:500.; and
 - Prepare a property inventory database for each locality, which shall be cross-referenced to the properties shown on the ROW plans.

3. Time Schedule and Deliverables

Within the period agreed for these services, the Service Provider shall submit to MCG the survey report, the video ROW recording, photos of the ROW, the ROW plan for each locality and the property inventory database for each locality.

Schedule 3 to Annex I Road Project Director

1. Introduction

The Road Project Director ("**RPD**") will have overseeing authority for the assistance for preparation of the Proposed Road Project and will act as the focal point for communications between outside organizations and MCG. The work of the RPD will be undertaken by an individual (the "**Service Provider**") to be engaged by Millennium Challenge Georgia Fund ("**MCG**").

The final TOR in the contract with the Service Provider will be subject to MCC approval and may set out in more detail the scope of work to be undertaken and the deliverables and time schedule.

2. Position Responsibilities

- Acting as the focal point for communications between MCG and MCC, the Road Project Management Unit, consultants, the Roads Department of the Ministry of Economic Development ("**RD MED**"), NGOs, international donor agencies, and other organizations;
- Advising MCG senior management on all aspects of the Proposed Road Project preparation (including the feasibility study, environmental impact assessment, final design, and right of way property survey) (the "**Road Project Preparation**");
- Overseeing the technical aspects of procurement of the services of consultants and contractors who will undertake surveys, feasibility studies, EIA, final designs, together with the Procurement Agent;
- Providing Service Providers with the documents and information held by MCG related to the Road Project Preparation unless deemed confidential or otherwise reasonably withheld;
- Overseeing the work performed by Road Project Preparation consultants, including accepting deliverables, subject to MCC approval;
- Monitoring and evaluating the progress of the surveys, feasibility studies, EIA and final design preparations, and monitoring and evaluating financial progress;
- Working closely with MCC to develop and implement efficient procedures to effect timely payment under the contracts with Service Providers for the Road Project Preparation;
- Recommending actions necessary to keep Road Project Preparation progress on-track;
- Recommending additional specialist input requirements, identifying possible sources for these inputs, and overseeing their procurement subject to the approval of MCG;
- Making presentations about the Road Project Preparation to a variety of stakeholders;
- Maintaining satisfactory books and records of the Road Project Preparation activities and Service Provider contracts on behalf of MCG, and providing such books and records upon request to MCG; and
- Performing other duties as assigned by MCG senior management.

3. Time Schedule and Deliverables

The Service Provider shall undertake the foregoing responsibilities for a period of 5 months from the effective date of the contract for these services. The Service Provider shall provide to MCG upon request and at the end of such 5-month period, all books and records of the Road Project Preparation activities.

ANNEX II

FORM OF REQUEST FOR DISBURSEMENT OF GRANT

Section 1. Request Summary	
Country	GEORGIA
Grant Agreement date Implementation Agreement date	
Grant Assistance Component Number and Description	
Service Provider	
Service Provider Contract Date	
Date of MCC approval of Service Provider Contract	
Provision of Service Provider Contract pursuant to which request is made	
Service Provider Invoice Date and Number	
Request Date	
Disbursement Period Beginning Date	
Disbursement Period End Date	
Disbursement Request Number	
Currency	
A. Disbursement Request: The undersigned hereby requests the Millennium Challenge Corporation ("MCC") to disburse funds under the Grant Agreement by and between the Government of Georgia, acting through the Ministry of Finance (the "Ministry"), and MCC, dated the date first mentioned above and the Implementation Agreement by and between the Government, acting through the Ministry, Millennium Challenge Georgia Fund ("MCG") and MCC, dated the date first mentioned above as follows:	
1. Disbursement amount requested from the MCC (amount in USD):	
2. Amount requested in words (in USD):	
3. Service Provider to which disbursement is requested to be made	
B. Compliance. The undersigned confirms that the disbursement requested hereby is in accordance with the terms and conditions set forth in the Grant Agreement and the Implementation Agreement and pursuant to a Service Provider Contract approved by MCC.	
C. Authorization: The undersigned acknowledges that funds disbursed in accordance with this request will be paid directly to the Service Provider in accordance with the Grant Agreement and the Implementation Agreement and the applicable Service Provider Contract.	

Millennium Challenge Georgia Fund

By: _____

Name: _____

Title: _____

As Authorized Principal Representative of Millennium Challenge Georgia Fund

Date: _____

With a simultaneous copy to:

Ministry of Finance

70a I. Abashidze St.

Tbilisi, 0062

Georgia

Tel: (995-32) 22-68-05

Fax: (995-32) 33-19-22

ANNEX III

FORM OF SERVICE PROVIDER INVOICE

FORM OF INVOICE	
1.	Name, address and telephone number of the Service Provider
2.	<p>Addressee:</p> <p>Millennium Challenge Georgia Fund Attention: Chief Executive Officer 4 Sanapiro St. Tbilisi, 0105 Georgia Tel: + (995-32) 93-91-12; 93-91-13; 93-91-33 Fax: + (995-32) 93-91-44 Email: lashanidze@mcg.ge</p> <p>With simultaneous copies to:</p> <p>Millennium Challenge Corporation Attention: Vice President for Country Programs, with a copy to the General Counsel 875 Fifteenth Street, N.W. Washington, DC 20005 United States of America Tel: 1-202-521-3600 Fax: 1-202-521-3700 Email: VPCountryPrograms@mcc.gov (Vice President for Country Programs); VPGeneralCounsel@mcc.gov (Vice President and General Counsel)</p> <p>AND</p> <p>Ministry of Finance 70a I. Abashidze St. Tbilisi, 0062 Georgia Tel: (995-32) 22-68-05 Fax: (995-32) 33-19-22</p>
3.	Date of invoice
4.	<p>(a) Contract Number (or other authorization for services performed or supplies delivered (including order number and contract line item number))</p> <p>(b) Number and date of Commitment Letter (if any) with the Millennium Challenge Corporation</p>
5.	Description, quantity, unit of measure, unit price and extended price of services performed or supplies delivered

FORM OF INVOICE

6. Name and address of Service Provider official or the bank account routing information to whom or to which payment will be sent (must be the same as that in the Contract or in a proper notice of assignment). The Service Provider must at a minimum include the following information regarding the account to which the payment will be sent:

Account name:

Account number:

Bank name:

Full bank address (including country):

Bank SWIFT Code:

Bank Code:

Routing instructions for payments:

A United States Service provider shall also furnish the following information [if appropriate]:

[Taxpayer Identification Number]

[Electronic funds transfer banking information – may be included in the invoice or otherwise submitted, e.g., through the Central Service Provider Registration process]

[Any other information or documentation required by the Contract]

7. Name, title, phone number and mailing address of the person to notify in the event of a defective invoice

8. Billing Information:

- (a) Amount billed in this invoice
- (b) Cumulative billings under this Commitment Letter
- (c) Balance remaining under this Commitment Letter

FORM OF INVOICE

9. An executed Service Provider's Certificate certifying the following:

(a) The Service Provider will, upon the request of the Government of Georgia, promptly make appropriate refund to the Millennium Challenge Corporation, plus from the time of payment to the Service Provider, in the event of:

- a. Its nonperformance, in whole or in part, under the Contract, or
- b. Any breach by it of any of its undertakings in this Certificate, or
- c. Any false certification or representation made by it in this Certificate.

At its option, the Government of Georgia may deduct, or may instruct the Millennium Challenge Corporation to deduct, any refund due under this paragraph from other amounts payable to the Service Provider.

(b) To the best of its information and belief, any commodity or service supplied under the Contract meets the requirements specified in the Contract.

(c) Neither the Service Provider nor its agent has compensated any person to obtain the Contract except as permitted under the laws of Georgia and approved in writing by MCG.

(d) Neither the Service Provider nor its agent has made or will make any payment to or for the benefit of the Purchaser, the Purchaser's agent, or any other person or entity in the nature of a kickback. Any commission paid or to be paid by the Service Provider to its agent in connection with the transaction for which payment is being requested under the Contract is shown in item 5 above and does not exceed the lesser of (a) the amount customarily paid by the Service Provider in connection with similar transactions or (b) the amount customary in the trade. Neither the Service Provider nor its agent has given or received and will not give or receive any payment or benefit whatever in connection with any transaction or series of transactions that are covered by the Contract other than those payments or benefits permitted under this Certificate and Agreement.

(e) The Service Provider has not been placed on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs" published by the United States General Services Administration (<http://epls.arnet.gov>), or the list of "Specially Designated Nationals and Blocked Persons" published by the United States Treasury Department Office of Foreign Assets Control and thereby rendered ineligible to receive Millennium Challenge Corporation funds. To the best of its knowledge, the Service Provider has not subcontracted and, in any event, will not subcontract the services covered by this Certificate and Agreement to any subcontractor included on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs" or included on the list of "Specially Designated Nationals and Blocked Persons" or from any affiliate of a person or entity on such lists.

(f) The Service Provider will for a period of not less than five years after the date of final payment maintain all business records and other documents which bear on its compliance with any of the undertakings and certifications herein and will, at any time requested by the Millennium Challenge Corporation promptly furnish to the Millennium Challenge Corporation such additional information as the Millennium Challenge Corporation may request relating to such compliance.

(g) The natural person who signs the certificate must state that he or she is either the Service Provider or that he or she has actual authority to sign on behalf of the Service Provider and to bind the Service Provider with regard to all certifications and agreements contained in this Certificate and Agreement. He or she must further certify, if he or she is not personally the Service Provider, that he or she is either an employee of the Service Provider or he or she has a written power of attorney to sign for and bind the Service Provider

10. Signature by an authorized representative of the Service Provider

FORM OF COMMITMENT LETTER

MILLENNIUM CHALLENGE CORPORATION COMMITMENT LETTER	
DATE OF ISSUANCE:	OBLIGATION DOCUMENT NUMBER:
1. To SERVICE PROVIDER:	2. From THE MILLENNIUM CHALLENGE CORPORATION: Millennium Challenge Corporation 875 Fifteenth Street, NW Washington, D.C. 20005
3. AMOUNT OF COMMITMENT:	4. EXPIRATION DATE: _____, 200
5. CONTRACT: (Contract dated _____, 200_, between Service Provider and _____.)	6. ACCOUNTING AND APPROPRIATION DATA:

1. In accordance with the Millennium Challenge Act of 2003, the Millennium Challenge Corporation (“MCC”) has approved assistance to the Government of Georgia to facilitate the development and implementation of a Compact between MCC and the Government to support policies and programs that advance the progress of Georgia in achieving lasting economic growth and poverty reduction. In accordance with the terms of the Implementation Agreement, dated [], between MCC, the Ministry and MCG, MCG has asked MCC to deliver this Commitment Letter to you, the Service Provider identified in block 1 above. MCC hereby agrees to pay you for services performed or supplies delivered under the Contract identified in block 5 above upon submission of invoices submitted in accordance with the terms of this Commitment Letter.

3. MCC reserves the right at any time and from time to time, and for any reason and cause whatsoever, to supplement, modify, or revoke this Commitment Letter to the extent and in such manner as it deems necessary. However, no supplement, modification, or revocation shall become effective as to the Service Provider until such supplement, modification, or revocation is accepted by the Service Provider.

5. The billing period covered by a single invoice (other than a final invoice) shall be at least 30 days. The Service

Provider shall submit a copy of each invoice in form and substance as specified in Attachment 2 of this Commitment Letter, to MCG:

Millennium Challenge Georgia Fund
Attention: Chief Executive Officer
4 Sanapiro St.
Tbilisi, 0105
Georgia
Tel: + (995-32) 93-91-12; 93-91-13; 93-91-33
Fax: + (995-32) 93-91-44
Email: lashanidze@mccg.ge

with two simultaneous copies to the Millennium Challenge Corporation as follows:

Millennium Challenge Corporation
Attention: Vice President for Country Programs (one copy), General Counsel (one copy)
875 Fifteenth Street, N.W.
Washington, DC 20005, United States of America
Tel: 1-202-521-3600
Fax: 1-202-521-3700
Email: VPCountryPrograms@mcc.gov (Vice President for Country Programs);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

AND

Ministry of Finance
70a I. Abashidze St.
Tbilisi, 0062
Georgia
Tel: (995-32) 22-68-05
Fax: (995-32) 33-19-22

6. The Service Provider shall be responsible for all bank charges, commissions, and other charges, if any, associated with or applied to payments made under this Commitment Letter after disbursement of funds by the Millennium Challenge Corporation.

7. The following are an integral part of this Commitment Letter:

- (i) Attachment 1, Payment Terms [from Contract], and
- (ii) Attachment 2, Form of Service Provider's Invoice [from Contract].

8. You must submit all invoices payable under this Commitment Letter in proper form with documentation specified in this Commitment Letter not later than the Expiration Date stated in block 4 above.

9. You may not assign this Commitment Letter without the approval of MCC in writing.

10. By accepting this Commitment Letter, you acknowledge that (1) you will be entitled to payment under this Commitment Letter only if you have performed your obligations under the Contract in a manner that would entitle you to payment under the Contract and (2) this Commitment Letter confers no greater rights regarding payment than you have under the Contract.

If this Commitment Letter is acceptable to you, please indicate your acceptance by signing and inserting the date in the spaces indicated below and returning a copy of this Commitment Letter to me at the address stated in block 2 above.

Sincerely,

Name:

Title:

Millennium Challenge Corporation